

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x  
4 UNITED STATES OF AMERICA,

5 -vs-

7:19-CR-548 (KMK)

SENTENCING

6 GABRIEL LETIZIA,

7 Defendant.  
8 -----x

9 United States Courthouse  
10 White Plains, New York

11 Wednesday, May 18, 2022  
12 11:30 a.m.

13 B e f o r e:

14 HONORABLE KENNETH M. KARAS,  
15 District Judge

16 A P P E A R A N C E S:

17 DAMIAN WILLIAMS

18 United States Attorney for the  
19 Southern District of New York

20 JAMES F. McMAHON,

OLGA I. ZVEROVICH,

JEFFREY COFFMAN,

Assistant United States Attorneys

21  
22 OFFICES OF FREDERICK P. HAFETZ  
23 FREDERICK HAFETZ, ESQ.

Attorney for Defendant

24 GEORGE WEINBAUM, ESQ.

Attorney for Defendant  
25

1 THE DEPUTY CLERK: All rise. The Honorable Kenneth M.  
2 Karas presiding. 19-CR-548, the United States of America v.  
3 Gabriel Letizia.

4 Will Counsel please state their appearances.

5 MR. McMAHON: Yes, good morning, your Honor. James  
6 McMahon and Olga Zverovich for the United States. Also on the  
7 telephone is Jeffrey Coffman, Assistant United States Attorney,  
8 as well.

9 THE COURT: All right. Good morning to you all.

10 MR. COFFMAN: Good morning.

11 MS. ZVEROVICH: Good morning, your Honor.

12 MR. HAFETZ: Good morning, Judge. Frederick P. Hafetz  
13 and George Weinbaum for Defendant.

14 THE COURT: Good morning, all. Please be seated.

15 Good morning again, Tabitha.

16 THE COURT REPORTER: Good morning.

17 THE COURT: All right. So my copy of the PSR on the  
18 screen just went blank, so let me give it another go.

19 (Brief pause)

20 THE COURT: All right, so we're here for sentencing.  
21 The pre-sentence report I read was last revised on August 2nd of  
22 2021. Is that the most recent report you all have?

23 MR. McMAHON: Yes, your Honor.

24 MR. HAFETZ: Yes.

25 THE COURT: Okay. And in terms of the submissions,

1 that means the Defense submission, which was filed on May 4th of  
2 this year, I have read, and then there were a series of letters  
3 that were attached as exhibits. I have read them all. And then  
4 there was also a reply that was filed, Mr. Hafetz, you filed it,  
5 on May 17th.

6 Is there anything else I should have read on your  
7 client's behalf?

8 MR. HAFETZ: No, your Honor.

9 THE COURT: Okay.

10 And the Government, I read your submission that was  
11 filed on May 11th of this year. Is there anything else I should  
12 have read on the Government's behalf. Well, I guess the victim  
13 statements.

14 MR. McMAHON: Yes, the victim statements, right.

15 THE COURT: So two sets of those.

16 MR. McMAHON: I have three actually.

17 THE COURT: Okay.

18 MR. McMAHON: I have one that was sent to the Court on  
19 April 28th.

20 THE COURT: Yeah, I don't have the dates that they  
21 were sent because I just basically have downloaded them.

22 (Brief pause)

23 MR. McMAHON: I have the one that was sent on November  
24 29th.

25 THE COURT: Let me say again...

1 MR. McMAHON: Oh.

2 THE COURT: I don't know the dates. What I said was  
3 is I just downloaded the documents themselves because they have  
4 been filed.

5 MR. McMAHON: Perhaps the best thing to do is --

6 THE COURT: The November 1 may be the one I don't  
7 have, so can you hand that up?

8 MR. McMAHON: Yeah.

9 THE COURT: Great. Thanks, Mr. McMahon.

10 You know, actually, I have this one, I think. Yeah, I  
11 have this one.

12 MR. McMAHON: Let me hand up another one, Judge.

13 THE COURT: Okay.

14 MR. McMAHON: For the record, dated November 19th.

15 (Brief pause)

16 THE COURT: Yep, I have this one.

17 MR. McMAHON: Let me hand up a third, Judge. For the  
18 record, dated April 28th of this year.

19 (Brief pause)

20 THE COURT: All right, I have this one, too, so I  
21 misspoke because I have them all. All right.

22 All right, so having read those, is there anything  
23 else I should have read on the Government's behalf, Mr. McMahon?

24 MR. McMAHON: No, your Honor.

25 THE COURT: Okay.

1 Mr. Hafetz, have you had a chance to go over the  
2 pre-sentence report with your client?

3 MR. HAFETZ: Yes, your Honor, we have.

4 THE COURT: Are there any objections to resolve?

5 MR. HAFETZ: We filed a short letter to Probation  
6 about a bunch of months ago, and what we stated was in there,  
7 some of them were word corrections, we objected to the Probation  
8 PSR statement about adverse health reactions to the product that  
9 was manufactured.

10 THE COURT: So let me ask again, are there any  
11 objections we need to resolve.

12 MR. HAFETZ: Oh.

13 THE COURT: Because I know Probation did resolve some  
14 of them.

15 MR. HAFETZ: I don't think so.

16 THE COURT: Okay.

17 Mr. McMahon, have you read the report?

18 MR. McMAHON: I have, your Honor.

19 THE COURT: Are there any objections?

20 MR. McMAHON: No, your Honor.

21 THE COURT: All right, then. I'll adopt the factual  
22 findings therein.

23 All right, so, Mr. Hafetz, I propose to hear from you  
24 first, and then the Government, you can reply to anything that  
25 is said on the Government's behalf. Otherwise, Mr. Letizia has

1 the opportunity of the last word if there's anything he'd like  
2 to say.

3 Mr. Hafetz.

4 MR. HAFETZ: Sure, thank you.

5 Your Honor, I would -- I know your Honor has read the  
6 submissions very carefully, but there are certain things that I  
7 would like to emphasize.

8 THE COURT: Please.

9 MR. HAFETZ: First, with respect to the guidelines  
10 themselves and their relevance with respect to the sentencing  
11 proceeding, your Honor is as familiar, more familiar than I am,  
12 with the sentencing juris prudence in this Circuit and District.  
13 With respect to the -- what weight should be given to the  
14 guidelines, I would just say I believe it's quite clear the  
15 Court has great discretion to sentence other than, below the  
16 guidelines, and with regard to the fraud loss calculation as a  
17 factor in the calculation of the guidelines, there are many  
18 decisions in this District in the Court of Appeals which caution  
19 against and are quite critical of the guideline reliance on the  
20 loss figure in the fraud tables as a driver of the sentencing.

21 Judge Lynch stated in *Emenrigger* (ph) case when he  
22 presented on the District Court that it is a weak indicator of  
23 the moral seriousness of the offense. Judge Rakoff's opinions  
24 in *Gupta* and *Adelson* are quite critical of the fraud loss table.  
25 I believe Judge Rakoff's words were that it's a fetish of the

1 guidelines with arithmetic that leads to travesty of justice  
2 with respect to the emphasis on the guidelines. They have been  
3 criticized by other District Court judges. The Court of Appeals  
4 in the *Algame* (ph) case was critical of reliance on the fraud  
5 tables with respect to having a prominent place with respect to  
6 the sentencing because of the bizarre and utter, as Judge Rakoff  
7 says, of the fetish with the arithmetic in the loss.

8           THE COURT: So I think one of the fair criticisms of  
9 the guidelines is that, right, it does focus on a number, and  
10 the number, of course, doesn't always tell the story of the  
11 case. Fair point. And one of the particular vulnerabilities of  
12 the guidelines is it captures this notion of intended loss,  
13 right? So if somebody intends to be involved in a \$100 million  
14 scheme, then the defendant is potentially on the hook for  
15 guidelines purposes for an intended loss of \$100 million, even  
16 though nobody lost anything. That's not what we have here, all  
17 right? This is actual loss to the tune of millions of dollars,  
18 north of \$40 million, so I'm trying to understand how a loss  
19 amount, an actual loss amount, somehow reflects a fetishness for  
20 numbers, because that's a really whoppingly high number.

21           MR. HAFETZ: It's a high number, your Honor, but the  
22 judges who -- in the *Adelson* case, the loss figure, I think, was  
23 equal to that amount, a stock fraud case with respect to Judge  
24 Rakoff. I think notwithstanding whether it's intended or not,  
25 the loss figure in itself, because of the way the tables are set

1 up on the loss table, I think notwithstanding that, courts are  
2 still critical of the amount of the loss as the driver of the,  
3 of the sentencing, and I think that goes along with the juris  
4 prudence in the District stating that the -- an extremely  
5 important factor on the guidelines sentencing are the  
6 consideration of the individual's entire life, his good deeds.

7 THE COURT: Of course. I mean, but that's a separate  
8 question, right? Because the guidelines are only one part of  
9 the 3553(a) analysis, and no one disputes that.

10 MR. HAFETZ: Right.

11 THE COURT: Your point is that looking at the  
12 guideline as it relates to fraud by itself, the guideline itself  
13 is flawed, right? In addition to the argument that says, and I  
14 know you've quoted Judge Rakoff in your papers --

15 MR. HAFETZ: That, that --

16 THE COURT: Let me just finish.

17 -- is that -- so there's no question there's a  
18 holistic approach. I'm just trying to understand how this case  
19 fits into some of the criticism that relates to the guideline  
20 calculation of loss when there's no actual loss, right? It's  
21 just an intended loss. Whereas here, in terms of, you know, the  
22 moral -- sort of the morality/immorality of the conduct, you  
23 know, it's fair to say when someone actually causes \$40 million  
24 of loss, that they're more culpable than someone who only  
25 intends to cause \$40 million of loss, but doesn't actually cause



1 that loss.

2 MR. HAFETZ: Well, I think that's true, your Honor.

3 THE COURT: Okay.

4 MR. HAFETZ: But in terms of the heavy, heavy reliance  
5 as the driver, I mean, there is no explanation in the guidelines  
6 as to why they settle on these figures at all, why they pick  
7 this at level -- table...level 33 or level 31 or whatever the  
8 level, there's no explanation at all for it, so I'm not saying  
9 the loss figure, that actual loss, is different than intended  
10 loss, for sure it is, but in terms of the fixation and the  
11 driver as to the guideline determinate, I think it is still  
12 criticized with respect to, to that.

13 THE COURT: Okay.

14 MR. HAFETZ: But beyond that, with respect to the  
15 determinant of the relevant factors with regard to sentencing, I  
16 would turn to what Judge Rakoff stated in *Gupta*, which is when  
17 it comes time for sentencing, the guidelines take second place  
18 to § 3553(a) of the sentencing guidelines, namely the history  
19 and characteristics of the defendant.

20 THE COURT: That's actually not the law. The law is  
21 that the guidelines are among the factors that are to be  
22 considered and a judge is to weigh all of the 3553(a) factors.  
23 Sometimes the guidelines might be...seventh place, right?  
24 Because a judge might find that there were other of the 3553(a)  
25 factors that have more weight in a particular case. The point

1 is that you take all of the factors and you make an  
2 individualized determination, including considering the  
3 guidelines and the personal history and characteristics of the  
4 defendant and all of the factors listed therein.

5 Right?

6 MR. HAFETZ: Yes, all of the factors --

7 THE COURT: Right.

8 MR. HAFETZ: -- the starting point for calculation of  
9 the guidelines, and then the 3553(a) factors come into play,  
10 and, as I stated in the *Gupta* opinion, and I think it's quite  
11 important here, Judge Rakoff stated there that the guidelines  
12 take second place to the history and characteristics of the  
13 individual. I think the full quote, I think he expanded on it  
14 in *Adelson*, is how can it be otherwise. Because all the great  
15 systems in the world, the religious systems, the moral systems,  
16 the values, all place great weight with respect to the whole  
17 person, the holistic approach, and surely on the day of  
18 sentencing, the good that a person has done, as well as the bad,  
19 the charge weighs heavily with regard to the discretionary  
20 decision.

21 THE COURT: That's just not -- I...I mean, that's  
22 always been true. Pre guidelines, post guidelines, of course,  
23 the whole person's life history has to be considered. I mean,  
24 no one's disputing that. But it's only among the factors that  
25 are in 3553(a). Because 3553(a), I don't get to just say

1 percentage history and characteristics of the defendant and stop  
2 there. I have to consider alternatives to incarceration. There  
3 are all kinds of factors.

4 MR. HAFETZ: Well, for sure.

5 THE COURT: So I don't know what we're talking about  
6 here. Let's just apply the factors to this case.

7 MR. HAFETZ: Yes.

8 THE COURT: I think that that's what we should get to,  
9 right?

10 MR. HAFETZ: Yes, your Honor. I just -- this is a  
11 preface, I believe we're in agreement, your Honor, that the good  
12 someone has done -- obviously there are other factors that have  
13 to be considered, of course.

14 THE COURT: Of course.

15 MR. HAFETZ: But the good the person has done is  
16 extremely significant with respect to the sentencing here.

17 And with regard to Mr. Letizia, I think he has done  
18 exceptionally good deeds that exhibit in his lifetime, I think,  
19 a concern and a devotion to other persons, and I believe the  
20 letters that we have submitted to the Court, your Honor,  
21 extremely well depict what Mr. Letizia has done in his lifetime.

22 I would start -- and I'll refer to the letters briefly  
23 because I know --

24 THE COURT: Sure.

25 MR. HAFETZ: -- your Honor has read them.

1 THE COURT: I've read every one, but please feel free  
2 to repeat it.

3 MR. HAFETZ: But in my mind anyway, and I've been  
4 doing this for a long time, Judge, I haven't had too many  
5 defendants who appeared before sentencing, really, who were  
6 involved in saving a life, let alone three lives, and in this  
7 case, we have an individual who really did, according to the  
8 letter writer, save three lives. That's exceptional. It's  
9 important. In fact, I think it's highly significant.

10 He saved the life of his mother when he was a young  
11 person. In fact, that when he was young, the Government in its  
12 letter, in its submission, somewhat discounts this because it  
13 was a long time ago, but that obviously, I think, is not  
14 entitled, that view, any weight with regard to what we're  
15 talking about now, which is, as we both agreed, I think, before,  
16 we consider the whole man and his entire life, and you can't  
17 read it out of 3553(a) that it happened a long time ago. He  
18 saved his mother's life. It's a big deal.

19 And the letter of his, his friend who is sitting here  
20 in the courtroom today, your Honor, it's the letter, if I may  
21 refer to it...I think it is Exhibit 5 to our submission, Jerry  
22 Koshell. Mr. Koshell is an individual who spent pretty much a  
23 lifetime of teaching in the New York City school system. Mr.  
24 Koshell unfortunately encountered later in life a series of  
25 debilitating physical ailments which led to extreme emotional

1 distress and emotional concerns in his lifetime. Mr. Letizia  
2 was his neighbor for many years. And Mr. Koshell states, he  
3 puts it succinctly in his letter, he said if it wasn't for Mr.  
4 Letizia, he wouldn't be here today, he wouldn't be alive.

5           What did Mr. Letizia do? Mr. Letizia, not because he  
6 had money and he was spending money as the Government suggests,  
7 these were good deeds that a wealthy person does, but because of  
8 his innate decency and his innate kindness and concern about  
9 others, would spend hours and hours and hours over many days  
10 with Mr. Koshell, would speak on the telephone all hours of the  
11 night when Mr. Koshell was in extreme distress, and it was  
12 really because of this kindness that Mr. Letizia displayed that  
13 Mr. Koshell says that he really pulled through and made it  
14 today. I think that's a big deal. I think it's a big deal that  
15 Mr. Letizia did that with respect to what we're talking about  
16 now, the 3553(a) factor of history and characteristics of an  
17 individual.

18           Yet, there's a third person who's also in the  
19 courtroom today, Christina Andropoulis who writes with respect  
20 to what Mr. Letizia did for her. Ms. Andropoulis, an individual  
21 who is a successful business person, in addition, lives in  
22 Massachusetts as she states. She's also appointed to several  
23 respected positions by Massachusetts state authorities with  
24 regard to governmental positions. She writes in her letter with  
25 respect to how on a business trip to Western Africa, I think it

1 was Liberia, I believe, she was kidnapped, and she states that,  
2 her word, it's her word, Mr. Letizia was instrumental,  
3 instrumental, in obtaining her release from kidnappers who she  
4 feared might kill her.

5           So three occasions throughout his life, none of them  
6 having anything to do with money, you know, Mr. Letizia saved --  
7 was instrumental in saving the lives of three persons. I don't  
8 know many people that I've come across who have done that,  
9 Judge. I couldn't say one time even for myself, but I think  
10 this is -- if there was ever a time where this was significant,  
11 I think it's at this time, on judgment day, when we're judging a  
12 whole person and weighing the good deeds against the bad deeds,  
13 and I think it's extremely significant with respect to the  
14 nature of the individual who is going to be sentenced.

15           And there are the other letters that talk about the  
16 exceptionally kind and good deeds that Mr. Letizia did. There  
17 are the letters from the children of the woman -- two women with  
18 whom Mr. Letizia had long-term serious relationships at  
19 different times, long after he had been divorced from his first  
20 wife. Two of the children, Neema and Navid, in their letters  
21 talk about how after Mr. Letizia separated or ended the  
22 relationship with the mother at what they call a very delicate,  
23 fragile time in their growing up period, Mr. Letizia continued  
24 to be devoted to them. He stayed in their life and they  
25 recognized it. Neema writes in her letter about how Mr. Letizia

1 knew how much he was needed in her life and he stayed there for  
2 her -- in his life at that time. In fact, he states "he knew I  
3 needed him the most through that time and our relationship did  
4 not miss a beat." The sibling, Neema, writes a similar letter  
5 with respect to that Mr. Letizia was not walking away,  
6 understood the importance of him keeping a bond, a close  
7 relationship, and a support, emotional support, to these  
8 children even though he had ended the relationship with their  
9 mother.

10 More striking, actually, is the letter of their  
11 cousin, Kyle Giannotti. Kyle is an individual, as he states in  
12 his letter, who at -- was born in Iran, mother died when he was  
13 eight, moved here with his father from Iran, and as he -- when  
14 he was in high school in Connecticut, his father had to go back  
15 to Iran and stayed there while he lived alone in Connecticut.  
16 And he writes very poignantly about how Mr. Letizia went out of  
17 his way to include Kyle, along with Neema and Navid, in terms of  
18 his devotion and to his well-being.

19 He writes, he states in his letter, "from day, one  
20 Gabe made it his mission to be a father figure in my life," and  
21 he states that "Gabe only cared about the three of us having a  
22 good time. He would sacrifice anything just to see smiles on  
23 our face." I think what these letters talk about -- and there's  
24 a similar letter from Shelley, the daughter of the other woman  
25 with who Mr. Letizia had a long-term relationship, in terms of

1 how he played an extremely important role in her life after he  
2 had broken up with her mother. I think these speak a lot about  
3 Mr. Letizia's devotion and concern for others and basically his  
4 humanity, and I think these letters are quite, are quite  
5 important.

6           There are other letters which talk about -- many of  
7 them refer to various good deeds that Mr. Letizia did; providing  
8 jobs for people who needed jobs, helping out financially with a  
9 cancer victim, helping provide money for persons who needed  
10 hare-lip surgery, persons who were on hard times, and generally  
11 how supportive Mr. Letizia was. I think many of them say that  
12 Mr. Letizia would never turn his back on anyone when anyone  
13 needed a favor, and I think this is kind of the core of Mr.  
14 Letizia's -- of who Mr. Letizia is.

15           Obviously Mr. Letizia has committed a fraud, a  
16 substantial dollar amount of fraud, but I think when we talk  
17 about the guideline factor -- I'm sorry, the sentencing factor  
18 of 3553(a), good deeds, and we talk about the holistic person, I  
19 think what we see here is a person of great humanity, kindness,  
20 and devotion to others, and I believe that this is a quite  
21 significant factor with respect to the sentencing of Mr.  
22 Letizia.

23           With regard to other factors, your Honor, we've  
24 addressed them in a letter. The Government in its submission  
25 referred to some other factors. We deal with them in the



1 letter. They talked about finding an allegation of a hidden  
2 million dollars in cash. We addressed that in our reply.

3           With regard to the allegation of health consequences,  
4 which I think is important, I mean, we're talking about a fraud,  
5 but the Government -- obviously it's a large fraud, but the  
6 Government here, in terms of describing the fraud, adds to it,  
7 attempts to add to it, that there were adverse health  
8 consequences with respect to that. I think that's an empty  
9 allegation by the Government, there's no support for it, and,  
10 indeed, the Government conduct with respect to that is to the  
11 contrary, because had the Government believed there were adverse  
12 health consequences, the Government would have taken action back  
13 in 2017 when the FBI and the FDA began to investigate and began  
14 to learn from witnesses who were cooperating of the basic  
15 allegation of testing less than the number of people that the  
16 manufacturers had paid for. The Government did nothing with  
17 respect to that. They let AMA operate for the next several  
18 years. They brought no action of any attempt to try to shut it  
19 down, to prevent them to continue the...the business that they  
20 were doing, so for the reasons that we state and the other  
21 reasons as well that we state in our reply, I believe there is  
22 no support for that allegation or to makes that a factor with  
23 regard to the sentencing in this case.

24           Finally, your Honor, I'll just mention briefly, there  
25 is a plea to a felony, five years, and two misdemeanor counts

1 that were added by the Government as part of the plea agreement  
2 makes a total of a seven-year potential. I understand  
3 misdemeanors carry with them jail sentences. I think the  
4 gravamen here of the charge is the five-year charge and with  
5 regard to the sentencing.

6           So in sum, your Honor, your Honor's quite correct,  
7 obviously it's a large fraud. Forty-plus million dollars is a  
8 large number for sure. Your Honor has to decide what kind of  
9 sentence to give to Mr. Letizia. It's an extremely difficult  
10 task. However, I think in this case, Mr. Letizia as an  
11 individual throughout his life has demonstrated a level of  
12 humanity, compassion, decency, and care for other human beings  
13 that weighs heavily in the scale of what sentence should be,  
14 should be meted out to him today.

15           He stands before the Court a 72-year-old man, broken  
16 man. I mean, he's humiliated, he's lost his business, he will  
17 have a debt that in no way will he ever be able to pay off even  
18 if he lives for 160 years or more and he is -- his assets are  
19 virtually depleted, so we would ask the Court, as we said, we've  
20 asked the Court to sentence Mr. Letizia to a period of home  
21 detention or, alternatively, a sentence no greater than one year  
22 in prison, your Honor.

23           THE COURT: Thank you very much.

24           Mr. McMahon.

25           MR. McMAHON: Yes, your Honor, thank you.

1 A lot has been said in the sentencing memo and in the  
2 PSR about this being a massive fraud that lasted for decades and  
3 how much money the Defendant made off of it, and I don't need to  
4 go into all of that because it's been covered, but I just wanted  
5 to highlight two other points that I believe set this case apart  
6 from other fraud cases, and the first thing is, one of the  
7 things that Mr. Hafetz was just talking about, is the issue of  
8 the risk to public health from the Defendant's conduct.

9 We basically agree on the facts. As we said in our  
10 sentencing memo, the only adverse reaction that we're aware of  
11 was redness to the skin on some people that used these products  
12 that didn't last for more than 24 hours. So those are the  
13 facts; we agree on that. Where we disagree is on how we see  
14 that risk.

15 You know, the AMA's clients wanted fifty panelists or  
16 a certain number of panelists on these various studies for a  
17 reason. They needed that number, whatever that number was that  
18 they agreed to and paid for, because they needed that number of  
19 people to be tested in order for the test result to be reliable,  
20 and when I say reliable, these clients, the 240 victims here,  
21 relied on these test results to sell their products around the  
22 world, the sunscreens and the cosmetics and the perfumes and all  
23 of that, and these are large and -- large and very reputable  
24 manufacturers, these are manufacturers that you've heard of, and  
25 they are literally selling these products all throughout the

1 world.

2           As we know, these tests weren't reliable. At all.  
3 And as a result -- you know, and this went on for decades, as I  
4 said, and as a result, we also know that the Defendant also  
5 suppressed some adverse test results. Not all adverse test  
6 results, but some of them that were never then reported to the  
7 client. He did this to make money, as we know, and in doing  
8 that, in our view, he exhibited just a very, very callous  
9 disregard for the risk he was taking to public health. There  
10 was a risk here. We're very, very lucky that there weren't any  
11 more results or impact of it that was more serious than what it  
12 was.

13           THE COURT: That we know of. I mean...

14           MR. McMAHON: And that we know of, also.

15           THE COURT: To the extent that -- because it's the  
16 companies, sure, that they are worried about their reputation,  
17 but it's the consumers that depend on the representations about  
18 the product, so if some parent is buying SPF50 for their kid,  
19 they expect it to protect their kid from the sun, we all know  
20 the dangers now of being exposed to the sun and ultraviolet  
21 rays, and it turns out it's an SPF25, then we don't know how  
22 that may have affected...

23           MR. McMAHON: Right, and we may not know for decades.

24           THE COURT: Right.

25           MR. McMAHON: It's something that --

1           THE COURT: I mean, we can't tie that in to AMA's  
2 testing as opposed to anybody else's, because it's not as if  
3 people can say, "well, on this date, I used this sunscreen and  
4 that's what caused whatever skin problems I had thirty years  
5 later."

6           MR. McMAHON: Right. Right. So to us, there was just  
7 a risk here, and the fact that the Defendant has disregarded  
8 that risk for money, I think that tells you something about his  
9 history, his character, and it goes also to the nature and  
10 circumstances of the offense.

11           The other issue is the hidden \$790,000 receivable.

12           The Defendant said in a letter that was filed on  
13 Monday that he should have disclosed this receivable, but he  
14 didn't because in his mind, it was not an asset, and that is  
15 just not credible. It's his largest asset by far and it  
16 represents a stream of income to him that is scheduled to come  
17 to him over the next thirty years and is scheduled to come from  
18 somebody who is now operating what is essentially the successor  
19 to AMA.

20           The idea that the Defendant would sell all of his  
21 business assets and then walk away and not attempt to collect on  
22 it or not expect to be paid on it isn't -- just isn't credible.  
23 You know, if he had to, he could sue on it, he could get all the  
24 equipment back from the guy he sold it to who wasn't paying for  
25 it and turn around and sell it to someone else, and maybe he

1 couldn't get \$790,000, but he could get maybe \$400,000 or  
2 something or he could get something for it. He's just not going  
3 to walk away from that which is still an asset to him. It just  
4 doesn't make sense and it's just not credible. But what does  
5 makes sense and what is believable is that he didn't tell  
6 Probation about it because of what Mr. Hafetz just referred to.  
7 He is now facing massive debts as a result of this case and he  
8 just didn't want to pay that, so he hid the asset instead.

9           Most defendants, I have found, in this defendant's  
10 situation where he's awaiting sentencing don't lie to Probation.  
11 That's a huge risk. It's a huge risk to lie about your assets  
12 because we're going to go out and find it, which is what we did  
13 here, and when you find that, it just doesn't look good in court  
14 obviously, so that's why they don't want to take that risk. But  
15 this defendant did, and it tells you about his character and it  
16 tells you about a lack of remorse here and it tells you that  
17 he's not going to adjust well to supervision at all.

18           So I think that puts him at a different category, I  
19 think, than most defendants and it shows the need, I think, for  
20 a significant sentence here, so that's why we're asking for  
21 what's effectively become the guidelines sentence of 84 months.

22           MR. HAFETZ: Your Honor, if I may? Just briefly?

23           THE COURT: Yes, of course.

24           MR. HAFETZ: Yeah, with regard to the adverse, the  
25 health risk, there's several significant things I point out.

1           The Government points to, because they can, any  
2 requirement that there be a certain number of people tested for  
3 health efficacy reasons. The reason is there is no regulation,  
4 there is no requirement by the FDA --

5           THE COURT: Well, but the customers had a protocol  
6 that they wanted his company to follow, right?

7           MR. HAFETZ: That's, that's true, and that's the  
8 fraud.

9           THE COURT: The companies, they ask for those  
10 protocols because in their experience, that -- those protocols  
11 give them some comfort level in the accuracy of the testing  
12 that's done.

13           MR. HAFETZ: Well, that may be the case, they wanted  
14 to do an excessive number, but that doesn't --

15           THE COURT: No, not excessive -- now you're making  
16 that up. You have no idea if that's an excessive number.

17           These are companies that presumably have some  
18 experience in the development and testing of their product, and  
19 they also need to be able to market their products with some  
20 level of integrity that their customers can take satisfaction in  
21 what they represent the products to do, that the products  
22 actually do that, so they create testing protocols, they pay  
23 companies like your clients a lot of money to follow these  
24 testing protocols, for a reason.

25           Are you disputing that?

1 MR. HAFETZ: The -- no question they asked for a  
2 certain number of customers be tested, but in terms of whether  
3 there was -- whether Mr. Letizia thought there was a health  
4 risk, he did not believe there was a health risk, no.

5 THE COURT: But why does he get to decide on his own  
6 protocols without telling the people who are paying a lot of  
7 money that he's not following their protocols?

8 MR. HAFETZ: Well, that's the fraud, and that's what  
9 --

10 THE COURT: Correct.

11 MR. HAFETZ: -- he pled guilty to.

12 THE COURT: So, but, again, presumably these companies  
13 have these protocols in place for a reason, because they want  
14 the testing to be reliable.

15 MR. HAFETZ: Your Honor, I would say the other way --

16 THE COURT: And when somebody gets paid money to  
17 follow those protocols and doesn't follow them, shouldn't he  
18 tell the company so they can understand that their protocols  
19 aren't being followed and so maybe the testing isn't as reliable  
20 as they want it to be?

21 MR. HAFETZ: And that's the fraud, but in terms of --  
22 we're talking about a different issue, though.

23 THE COURT: No, we're not. Because the point of the  
24 testing protocols is so that the testing can be reliable, so  
25 they can satisfy themselves and their customers that the



1 products are what they say they are.

2 MR. HAFETZ: But it, it -- the FDA is the agency that  
3 deals with that area, and there's no requirement for this kind  
4 of testing by the FDA. Mr. Letizia was aware of nothing,  
5 nothing that --

6 THE COURT: He was aware of what the protocols were  
7 that he was being paid money to follow, right?

8 MR. HAFETZ: The internal company protocols, not as a  
9 matter of safety, required by U.S. law or --

10 THE COURT: I see, so --

11 MR. HAFETZ: -- regulation.

12 THE COURT: -- when a company -- we all understand  
13 that the purpose of sunscreen, among others, is to protect  
14 people from getting things like skin cancer, right?

15 MR. HAFETZ: Yes.

16 THE COURT: And when you're looking to buy for  
17 yourself or a loved one and you see SPF 50, you're, like, okay,  
18 SPF 50 is more protective than SPF 15, right?

19 MR. HAFETZ: Yes.

20 THE COURT: Okay. And how is it that they know that  
21 it protects at the level of SPF 50? Well, they get testing done  
22 on the product to see if it, in fact, does protect at that  
23 level, does it protect at that level for the number of hours  
24 that they say it does, does it protect at that level for the  
25 number of hours even when exposed to water that they say it

1 does, and to do that, they have protocols.

2           Forgetting the FDA, they have their own protocols to  
3 make sure that they can satisfy themselves and there are  
4 literally thousands and thousands of customers that it protects  
5 at the level that they say it does, and they paid a lot of money  
6 to your client and he didn't follow the protocols and he didn't  
7 tell them he wasn't following the protocols.

8           MR. HAFETZ: That, that's correct, your Honor, but it  
9 doesn't mean that he believed that he was creating a safety  
10 risk. There was nothing for him in the literature or anywhere  
11 that would tell him that this was a safety risk.

12           THE COURT: I see. So he decided on his own that the  
13 protocols were worthless. Right?

14           MR. HAFETZ: I think -- I think we're talking about  
15 two different issues, your Honor. We're --

16           THE COURT: No, they're not. They're the same issue.

17           MR. HAFETZ: I see it as he defrauded them with regard  
18 to the number of testing, but as to whether he believed that he  
19 was putting at risk --

20           THE COURT: It's not a question even of belief, it's a  
21 question of foreseeability, and at the end of the day, he's not  
22 the one who makes the decision on the protocols, it's the  
23 customer who's paying the money that says do the testing  
24 consistent with these protocols, period, end of story.  
25 Otherwise, he shouldn't take their money.

1 MR. HAFETZ: That's, that's true.

2 THE COURT: Okay.

3 MR. HAFETZ: That's true. But in terms of did he  
4 believe that he was creating a health risk, your Honor, I don't  
5 believe so, I don't believe there's anything --

6 THE COURT: And why should we take that self-serving  
7 representation to have any value here today?

8 MR. HAFETZ: Because of the absence of any FDA rule or  
9 regulation whatsoever that says that that amount of testing is  
10 required.

11 THE COURT: I see. So in other words, the companies  
12 literally just make up these protocols for no reason whatsoever.

13 MR. HAFETZ: Your Honor, they, they, they may want to  
14 ensure -- can I have just one minute, your Honor? May I just  
15 consult?

16 (Counsel consults with Defendant)

17 MR. HAFETZ: Your Honor, just several points I would  
18 like to make.

19 THE COURT: Please.

20 MR. HAFETZ: My understanding is that with regard to  
21 testing, this was not uniform by all manufacturers, that they  
22 did not all require that number of testing. Some wanted less  
23 testing than others did. The reason for that being, I think,  
24 that there was no regulation with respect to the number. And  
25 the other is with respect to the FDA was part of this

1 investigation. Back in 2017, the Government acquired the  
2 information then with respect to the fact that for some  
3 manufacturers, less testing was being done for SPF product than  
4 was being paid for on the product that was then put out on the  
5 marketplace, but the Government, including the FDA, which was  
6 part of the team, never did anything to try to shut down or stop  
7 AMA from doing this. If the Government had been convinced that  
8 Mr. Letizia was creating a health risk when he became aware that  
9 some manufacturers were getting less testing than they asked for  
10 and the Government knew at the same time that many manufacturers  
11 were not asking for the same number of tests that other  
12 manufacturers were, the Government did nothing about it.

13           Mr. Letizia knew the investigation was going on in  
14 2017. No one ever said "you're creating a health hazard."  
15 There was no action against it. I find it difficult to accept  
16 that Mr. Letizia thought or believed he was creating a health  
17 hazard, and I find it difficult to believe that in the  
18 manufacturers of this product across the country it was a given  
19 that if you didn't have this amount of testing, you were going  
20 to endanger the children of people who were buying sunscreen,  
21 because I don't think that's the fact that.

22           THE COURT: Nothing more noble than blaming somebody  
23 else. Right? Okay, this is the FDA's fault. For thirty years  
24 he was taking money he didn't earn, not following testing  
25 protocols he was paid to follow, and part of it was to find out

1 if people had allergic reactions to the product, if there was  
2 some other adverse effect of the products, and whether the  
3 products performed as they were going to be advertised to  
4 perform. That's what he did for a living. And people relied on  
5 that, companies and people who bought the products from these  
6 companies, so the notion that you find it hard to believe that  
7 he wasn't aware that the failure to follow testing protocols  
8 might actually have an adverse health impact on people I find  
9 hard to believe.

10 MR. HAFETZ: Your Honor, the number varied from  
11 manufacturer to manufacturer, there's no rule --

12 THE COURT: Of course it did, but it doesn't mean it  
13 wasn't foreseeable that failing to do proper testing wasn't  
14 going to have an adverse health effect on people who bought  
15 products that involved their health. It's absurd to say that  
16 this was not foreseeable.

17 MR. HAFETZ: Your Honor, I -- if the numbers vary  
18 amongst the manufacturers, if not -- why not a hundred, why not  
19 two hundred? I mean, if one manufacturer --

20 THE COURT: Well, okay, but that's up to -- if he  
21 wants to suggest that, fine, but he wasn't following the  
22 protocols that he was being paid to follow. It's as simple as  
23 that.

24 MR. HAFETZ: That's true.

25 THE COURT: And the notion that not following these

1 protocols might not have some adverse effect on people, it's  
2 just, it's just not believable.

3 MR. HAFETZ: All right, your Honor. I don't think we  
4 have anything other to say than that I don't believe Mr. Letizia  
5 thought he was creating a health risk, your Honor.

6 THE COURT: Okay. Do you want to address this point  
7 because I meant to ask you about this, Mr. McMahon, which is  
8 that the FDA dropped the ball here.

9 MR. McMAHON: Well, Judge, first of all, we did a  
10 search at AMA. We got all the records. It was a voluminous  
11 amounts of records and it took time for us to figure out --

12 THE COURT: When was the search done?

13 MR. McMAHON: In 2017.

14 THE COURT: Okay.

15 MR. McMAHON: So it took time for us to get it and  
16 figure out what was going on. When we did, we spoke through an  
17 indictment and we issued a press release to that indictment, and  
18 that is how the victims found out what was going on. At which  
19 point, then they were able -- some of them, as you've read in  
20 the impact letters, had to withdraw products, they had to  
21 postpone introduction of new products, but they took action, the  
22 responsible ones, to make sure that --

23 THE COURT: Because they were concerned their products  
24 weren't performing as they said they were performing.

25 MR. McMAHON: Right, and, I mean, they had to

1 literally pull them off shelves in some instances. But they did  
2 that, and that's part of the costs that we're looking at now.

3 THE COURT: Okay.

4 MR. McMAHON: The other thing is that it is my  
5 understanding that I learned when I first came on this case that  
6 there are industry -- not regulations, but there are agreed-upon  
7 standards...

8 THE COURT: Right.

9 MR. McMAHON: For how many panelists you have to have,  
10 and that's why the customers or the clients chose the number  
11 that they wanted.

12 THE COURT: Well, and the proof of that is that when  
13 they found out they weren't being followed, they pulled the  
14 products or delayed introduction of products until they could  
15 get them properly tested.

16 MR. McMAHON: Right, that's right.

17 MR. HAFETZ: Your Honor, just with regard to the  
18 agreed-upon standards, I don't know what those are. I haven't  
19 seen anything with respect to that, any rule, regulation, as --  
20 by the agency in charge of this saying that there are  
21 agreed-upon -- so I understand the fraud point, but with respect  
22 to the statement about agreed-upon standards, I don't know where  
23 that is.

24 THE COURT: Okay.

25 All right, Mr. Letizia, is there anything you'd like

1 to say before sentence is imposed?

2 (Counsel consults with Defendant)

3 THE DEFENDANT: I don't have anything beyond the  
4 letter that I submitted to the Court, your Honor.

5 THE COURT: Okay. Which I have read. Thank you for  
6 that, Mr. Letizia.

7 The Court's task is to determine what sentence is  
8 sufficient, but no more than necessary to achieve the goals of  
9 the sentencing laws as they apply to Mr. Letizia and to his  
10 case. To do that, I have considered, as required, all of the  
11 factors set forth in 18 U.S.C. § 3553(a). In doing that, I  
12 have, of course, considered the pre-sentence report, I've  
13 considered the extensive written submissions of the parties,  
14 and, of course, I've considered what everyone has said to say  
15 here today.

16 The starting point, we are told, by higher courts  
17 among the 3553(a) factors is the guideline calculation. That is  
18 set forth without objection at paragraphs 25 through 39 of the  
19 pre-sentence report. The guideline for violation of 18 U.S.C.  
20 § 3371, which is the general conspiracy provision, is 2X1.1.  
21 Pursuant to § 2X1.1(a), the guideline from the substantive  
22 offense, plus any adjustments for such guidelines, are  
23 referenced, so the guideline for conspiracy to commit wire fraud  
24 is covered by § 2B1.1.

25 Because Mr. Letizia was convicted of an offense that



1 has a statutory maximum of less than 20 years, the base offense  
2 level is 6. That's pursuant to § 2B1.1(a)(2). Because the loss  
3 amount was \$46,200,000, 22 levels are added pursuant to  
4 § 2B1.1(b)(1)(L). Because the offense involved ten or more  
5 victims, two levels are added pursuant to § 2B1.1(b)(2)(A)(i).  
6 However -- oh, and also, because Mr. Letizia was an organizer  
7 and leader of the criminal activity that involved five or more  
8 participants, four levels are added pursuant to § 3B1.1(a).  
9 This all results in an adjusted offense level of 36, but three  
10 levels come off because of Mr. Letizia's acceptance of  
11 responsibility as reflected in his timely guilty plea, and  
12 that's pursuant to §§ 3E1.1(a) and (b). This yields a total  
13 offense level of 33.

14 Criminal history score is zero, so Mr. Letizia is  
15 comfortably in criminal history category 1. At a total offense  
16 level of 33 and a criminal history category of 1, the guideline  
17 range is effectively capped by the statutory max of the charges,  
18 so Count One of the statutory max is 5 years and Counts Two and  
19 Three, it's one year each, so the guideline range is effectively  
20 84 months. It would be much higher if it wasn't for the  
21 statutory caps that were in play here. So that is the math.

22 And, Mr. Hafetz, I could not agree with you more that  
23 the math does not come close to telling the whole story in any  
24 sense, including the sentence of Mr. Letizia, and I also happen  
25 to agree with you, and I guess Judge Rakoff, that the personal

1 history and characteristics of the person being sentenced are, I  
2 think, primary among the 3553(a) factors that have to be  
3 considered.

4           And, as I said, I read all of the letters, not just  
5 your quotations from the letters, but all of the letters, and  
6 there's no question that Mr. Letizia has been a great help to  
7 many people in his inner circle, both family members and close  
8 friends and people who are not officially family members, but  
9 certainly were treated like family members, and I'm referring,  
10 of course, to Neema and Kyle and Navid. And I think those, to  
11 me, honestly, those are the most compelling letters because  
12 those were letters where Mr. Letizia is acting very much in a  
13 father-like way to young people who very much needed a  
14 father-like figure in their lives. And it was not check  
15 writing, it was actually helping provide guidance and support in  
16 a situation where he was not required to do so, and I think it  
17 was extremely commendable, and I thought that the letters were  
18 heartfelt and they were filled with details that I think  
19 certainly reflect the efforts that Mr. Letizia made one of the  
20 individuals.

21           And there are plenty of other letters where Mr.  
22 Letizia is said to have provided moral support, to be present  
23 when people were dealing with personal crises, whether it was a  
24 health issue, a family member's health issue, a divorce,  
25 whatever it was, and it's not just limited to family members.

1 It also includes people who were a part of Mr. Letizia's circle  
2 of friends. And it is, of course, the case that persons should  
3 not be evaluated by the moments they're committing crimes, they  
4 should be evaluated in the entirety of their lives, and their  
5 good deeds should be weighed against their misdeeds, which is,  
6 of course, what I have done here.

7           And, yes, there is the rather complicated story of Mr.  
8 Letizia's mother, who had some very serious challenges as a  
9 mother. The record is replete with stories of her struggling  
10 with her own addiction issues that led her to be abusive. Mr.  
11 Letizia appears to have borne the brunt of that, and  
12 notwithstanding that history, he comes to his mother's rescue  
13 and not just saved her life, but he was willing to be engaged in  
14 her life even after all of the difficulties he suffered early on  
15 in life.

16           And I think, you know, the other examples, you know,  
17 the Koshell example, the letter does say at the very end that  
18 the person felt they were literally dying of exhaustion from  
19 lack of sleep and Mr. Letizia basically is able to buy a CPAP  
20 machine that was, I guess, better than all the others that had  
21 been provided. And then there's the rather, I mean, just an  
22 incredible story about this kidnapping. And it's a little murky  
23 as to what Mr. Letizia did. I mean, what it says is that  
24 "whatever Gabe did, it frightened the kidnappers," so there's no  
25 question that Mr. Letizia's life has been spent helping those

1 close to him.

2 I also think that the Government's comment on this is  
3 not unfair that a lot of the help that Mr. Letizia is said to  
4 have given involves spending money, so he takes people on trips  
5 to India with him and he buys machines for them and this whole  
6 kidnapping thing, who knows if the ransom is paid, who knows  
7 what was done, but it's not a far leap to think that it involved  
8 Mr. Letizia spending some of his ill-gotten gains. And I do  
9 think that one's charitable works, especially when they involve  
10 money, in a case where the fraud is over \$40 million, I think  
11 it's fair to put an asterisk next to some of the philanthropic  
12 efforts and some of the charitable efforts. Again, I don't  
13 think it explains away everything Mr. Letizia's done, but a lot  
14 of his support has been financial, and that's commendable, but  
15 it's not as commendable when it's money that he took by way of  
16 fraud.

17 But I also think the Government, you know, makes some  
18 other points about Mr. Letizia's character.

19 You know, there's the whole misrepresentation about  
20 him being a doctor. I mean, he just lived this lie and he  
21 shared this lie with people to, no doubt, add to his credibility  
22 as somebody who was going to be involved in testing products  
23 that involved people's health. There's this rather disturbing  
24 story and lying about the assets sale, and this explanation, I  
25 think, is just further example -- further evidence of Mr.

1 Letizia not being able to come to grips with the truth when the  
2 truth hurts him, so if we're on the subject of character, I  
3 think that that's something that also needs to be considered.

4           And I also think that in terms of the ledger of good  
5 deeds and misdeeds, it's a more compelling case when someone has  
6 spent a life helping people, when someone has spent a life in  
7 public service, you know, people who serve in the military.  
8 I've said this often, I think that is a relevant fact, but it  
9 has more weight when it's compared to someone who commits a  
10 crime in a momentary lapse of judgment. Because that happens.  
11 People, they give in to temptation in the moment and they  
12 shouldn't be judged for that fifteen-second decision or a  
13 momentary lapse of judgment. This was a thirty-year fraud. So  
14 at the same time that Mr. Letizia, on the one hand, exhibits  
15 great concern for some people in his life, he exhibits a callous  
16 indifference to the people who he was serving in his  
17 professional life.

18           And it's not just the companies that were paying a lot  
19 of money to have these products tested, it was the people who  
20 were buying these products, and as I said, it is entirely  
21 foreseeable that a failure to abide by protocols, whether  
22 they're FDA-required or not, the foreseeable consequence is that  
23 people were not going to feel comfortable using these products,  
24 were they going to cause adverse effects, were they going to  
25 perform at the level that they were said to have performed.

1 And the proof of that is how the customers reacted  
2 when they found out about AMA's deficiencies, systemic  
3 deficiencies, in not complying with the protocols that good  
4 money was being paid to follow. They had to pull products from  
5 the shelves. They had to delay the introduction of new  
6 products. There were articles that came out that did studies on  
7 products that had been AMA-tested to show that the SPF levels  
8 were barely half of what they were represented to be.

9 And to finger-point to the FDA, which doesn't learn  
10 about this, by the way, until after this investigation, the  
11 search in 2017, that leads to people sort of reevaluating AMA's  
12 products, AMA's tested products. There's this article that the  
13 Government cites in New Zealand in 2019, a shocking discrepancy  
14 between what was supposed to be done in these products, the SPF  
15 50, and what was actually done, and so, yes, it was entirely  
16 foreseeable, and this was something that, as I said, Mr. Letizia  
17 didn't do because he succumbed to temptation once, he made it a  
18 part of his life, and it was this sort of almost Jekyll & Hyde  
19 life of deep concern for people he knew and a lack of concern  
20 for people who were being served by the company that was  
21 supposed to be testing products for the benefit of consumers.

22 And as I said, the fact that the FDA didn't bring  
23 charges earlier or the fact that there's no FDA rule on the  
24 protocols is beside the point. He knew what he was being paid  
25 to do and he didn't do it, and he lined his pockets and he

1 financed, apparently, multiple trips to India and around the  
2 world and fancy cars and God knows whatever else. And, yes,  
3 including CPAP machines and getting people freed from kidnappers  
4 in Africa, but it's -- this was an entire life he led, he was a  
5 career fraudster, and so when we talk about Mr. Letizia's  
6 personal history and characteristics, that also has to be  
7 weighed in addition to his good deeds.

8           Pivoting to the factors that require focusing on the  
9 offense conduct, the need to impose a sentence that promotes  
10 respect for the law, and provides for just punishment, accounts  
11 for the seriousness of the criminal conduct, I've already said a  
12 lot about this.

13           I mean, I think that this was not only a massive  
14 fraud, it was a long-living fraud, it was a fraud that involved  
15 a series of lies and misrepresentations, and these lies and  
16 misrepresentations had a foreseeable consequence on people who  
17 were using these products, people who were selling these  
18 products. Mr. Letizia's customers lost a lot of money because  
19 of what they had to do in response to learning about his failure  
20 to follow the protocols that they paid him to follow.

21           So even if it was not foreseeable that people might  
22 get hurt, it certainly was foreseeable that the companies, his  
23 customers, were going to lose money once it came out that their  
24 products weren't being tested as they thought they were, and so  
25 -- and as I said, this is not intended fraud, this wasn't a

1 conspiracy that didn't result in anybody losing money. A lot of  
2 companies lost a lot of money and a lot of people may have  
3 gotten hurt in ways we'll never know, and that's a serious  
4 thing.

5           Deterrence, general deterrence is certainly an issue  
6 here and there's plenty of case law that talks about deterrence  
7 specifically when it comes to white-collar crime, case law in  
8 our Circuit. I'm less focused on specific deterrence, I think  
9 Mr. Letizia is very unlikely to do anything like this again, but  
10 I think it needs to be said that people should understand that  
11 even if they do good deeds, that they don't get a license to  
12 commit fraud on a scale such as this, and I'm talking about the  
13 dollar amount and on a scale in terms of the type of effects of  
14 not owning up to his responsibilities, what he was paid to do,  
15 and that's factor here.

16           And, of course, there's always consideration of the  
17 factor to avoid unwanted disparity, and I've considered that as  
18 well.

19           So my view is that the request from the Defense for  
20 the sentence that's been suggested, I think, is not anywhere  
21 close to being sufficient to achieve the goals of the sentencing  
22 laws, even giving a great amount of weight to the letters that  
23 have been submitted on Mr. Letizia's behalf. They are just  
24 outweighed by how galling this was, how long lasting it was, how  
25 serious it was in terms of dollar amount, how serious it was in



1 terms of the ramifications for the companies and their thousands  
2 of customers, and so that's why I'm not going to accept that  
3 recommendation.

4           What I'm going to do is, I'm not going to -- I think  
5 that the Probation's recommendation is a little more than is  
6 necessary because I think it undercounts some of Mr. Letizia's  
7 good deeds, so it's the judgment of the Court that Mr. Letizia  
8 be sentenced in connection with Count One to a sentence of 60  
9 months. In connection with Counts Two and Three, it's going to  
10 be 12 months, but those are to run concurrent with the sentence  
11 that's imposed in connection with Count One. Supervised release  
12 is 3 years. I'm not going to impose a fine because whatever  
13 financial resources Mr. Letizia has should go towards the  
14 forfeiture, which is -- and the restitution. The forfeiture is  
15 \$46,200,000.

16           The restitution, I gather there's an order that's been  
17 submitted, right, Mr. McMahon?

18           MR. McMAHON: Yes, there is.

19           THE COURT: And you've showed this to Counsel?

20           MR. McMAHON: I believe so.

21           MR. HAFETZ: Yes, your Honor.

22           THE COURT: Okay. All right. And so the restitution  
23 is in the amount of \$1,440,238.

24           Is that correct, Mr. McMahon?

25           MR. McMAHON: Let me double-check.

1 THE COURT: That's what your order says, so...

2 MR. McMAHON: If the order says it, then that's what  
3 -- yes.

4 THE COURT: All right. And then the special  
5 assessment is, as it must be, \$150. It's \$100 for Count One and  
6 \$25 each for Counts Two and Three.

7 In terms of the conditions of supervised release, Mr.  
8 Letizia is not to commit another federal, state, or local crime.  
9 He's not to unlawfully possess a controlled substance. I'm  
10 going to suspend the drug testing condition because the Court  
11 finds that Mr. Letizia is a very a low risk of any future  
12 substance abuse, but he is to cooperate in the collection of DNA  
13 as directed by the probation officer.

14 The standard conditions of supervised release 1 to 12  
15 are imposed. Those will be explained later.

16 The added conditions, Mr. Letizia is to provide the  
17 probation officer with access to any requested financial  
18 information. He's also not to incur any new credit charges or  
19 open additional lines of credit without the approval of the  
20 Probation Office unless he's in compliance with the installment  
21 payment schedule, which I'll get to in a minute.

22 Mr. Letizia is to report to the nearest probation  
23 office within 72 hours of release from custody. He can be  
24 supervised by the district of his residence.

25 In terms of the restitution, while Mr. Letizia is

1 serving his term of imprisonment, he's to remit restitution in  
2 conjunction with the Inmate Financial Responsibility Program,  
3 but in any event, not less than \$25 per quarter. Through the  
4 program, his deposits are to be reviewed for a six-month period  
5 and the amounts are subtracted for commissary and other  
6 expenses, and the remaining balance is used to determine  
7 payments towards the financial sanctions, which includes the  
8 restitution. Mr. Letizia is to notify the U.S. Attorney's  
9 Office for this District within 30 days of any change in his  
10 mailing or residential address that occurs while the restitution  
11 remains unpaid.

12           And then restitution is joint and several with...I'll  
13 just say the individuals listed in paragraph 1-A1 through 4 of  
14 the restitution order, and I'll adopt the payment instructions  
15 that are also listed in paragraph 3. And then, also, the  
16 payments are to be made consistent with schedule A of the order,  
17 which will accompany the judgment in this case.

18           Are there any open counts, Mr. McMahon?

19           MR. McMAHON: Yes, there's an indictment and a  
20 superseding indictment, and I would move to dismiss both.

21           THE COURT: All right, that's granted.

22           Mr. Letizia, to the extent you haven't waived it, you  
23 have a right to appeal this sentence. You have to file a notice  
24 of appeal within 14 days of when the judgment's entered.

25           In terms of a surrender date, Mr. Hafetz, what's your

1 proposal?

2 MR. HAFETZ: Your Honor, we would ask for 90 days for  
3 Mr. Letizia and the various things that he needs to get  
4 organized, including some health issues that he has to deal  
5 with.

6 THE COURT: That seems reasonable.

7 Mr. McMahon, do you have a problem with that?

8 MR. McMAHON: I don't object.

9 THE COURT: Okay.

10 MR. HAFETZ: But we would ask if the Court would  
11 recommend to the Bureau of Prisons that Mr. Letizia's  
12 incarceration time be served at the Montgomery Federal  
13 Correctional Institute at Montgomery Maxwell Air Base in  
14 Montgomery, Alabama.

15 THE COURT: All right, I'll make that recommendation,  
16 and we'll say that he is to surrender to the facility that the  
17 Bureau of Prisons designates by August 18 of this year, by noon  
18 on August 18.

19 Mr. Letizia, I say this to you not because I'm not  
20 concerned you won't do it, but I'm duty bound to let you know  
21 that it's a crime to fail to report to the institution as  
22 directed to do so.

23 All right, Mr. Hafetz, anything else?

24 MR. HAFETZ: No, your Honor.

25 THE COURT: Mr. McMahon, anything else?

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MR. McMAHON: No, your Honor, thank you.

THE COURT: Then we are adjourned.

Certified to be a true and accurate transcript.

A rectangular box containing a handwritten signature in blue ink that reads "Tabitha Dente".

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TABITHA DENTE, SR. COURT REPORTER